

BILL ANALYSIS

C.S.S.B. 776
By: Fraser
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that a municipally owned electric utility possesses certain unfair economic advantages when competing with the private transmission industry. The parties express specific concern regarding the lack of a statutory requirement that a municipally owned utility obtain a certificate of convenience and necessity or pay taxes to the local jurisdiction that such a utility crosses when constructing a transmission line outside the utility's service area. In addition to these concerns, the parties note that several decades ago the legislature created a joint powers agency to collectively generate, transmit, and sell electric power to several municipalities. The parties contend that this agency is operating under a power sales contract with the municipalities that is set to expire in the near future and that, under current statute, these municipalities cannot make certain changes to the agency. C.S.S.B. 776 seeks to address these concerns and issues.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 776 amends the Utilities Code, for purposes of Public Utility Regulatory Act provisions relating to certificates of public convenience and necessity as regards requirements regarding such certificates, to prohibit a municipally owned utility or a municipal power agency created under statutory provisions relating to joint powers agencies from directly or indirectly constructing, installing, or extending a transmission facility outside of the municipal boundaries of the municipality that owns the municipally owned utility, or the power agency's boundaries, which for the purposes of this bill provision consist of the municipal boundaries of the participating public entities, unless the municipally owned utility or power agency first obtains from the Public Utility Commission of Texas (PUC), through the application process provided by statutory provisions relating to an application for a certificate of convenience and necessity, a certificate that states that the public convenience and necessity requires or will require the transmission facility. The bill makes applicable to such an application obtained under this bill provision statutory provisions relating to the grant or denial of a certificate of convenience and necessity. The bill establishes that this bill provision does not apply to a transmission facility placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the Electric Reliability Council of Texas (ERCOT) transmission grid and for which, on or before January 1, 2015, a municipally owned utility was contractually obligated to purchase at least 190 megawatts of capacity. The bill requires the PUC to adopt rules as

necessary to provide exemptions to the application of this bill provision that are similar to the exemptions to the application of statutory provisions relating to certificates of convenience and necessity to an electric utility, including exemptions for upgrades to an existing transmission line that do not require any additional land, right-of-way, easement, or other property not owned by the municipally owned utility and exemptions for the construction, installation, or extension of a transmission facility that is entirely located not more than 10 miles outside of a municipally owned utility's certificated service area that occurs before September 1, 2021. The bill requires the PUC, not later than the 185th day after the date an application is filed under this bill provision, to approve the application filed for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC regions under specified provisions of the Federal Power Act. The bill authorizes the PUC, in approving the application, to prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

C.S.S.B. 776, for purposes of Public Utility Regulatory Act provisions relating to alternative energy providers as regards competition and transmission access in the wholesale market, entitles a municipally owned utility that is required to apply for a certificate of public convenience and necessity to construct, install, or extend a transmission facility within ERCOT under the applicable statutory provisions to recover, through the utility's wholesale transmission rate, reasonable payments made to a taxing entity in lieu of property taxes on that transmission facility, provided that the utility enters into a written agreement with the governing body of the taxing entity related to the payments, that the amount paid is the same as the amount the utility would have to pay to the taxing entity on that transmission facility if the facility were subject to property taxation, that the governing body of the taxing entity is not the governing body of the utility, and that the utility provides the PUC with a copy of the written agreement and any other information the PUC considers necessary in relation to the agreement.

C.S.S.B. 776 establishes provisions relating to alternative governance for certain municipal power agencies. The bill, for purposes of statutory provisions relating to the delivery of utility services as regards joint powers agencies, creates alternate governance provisions applicable to a municipal power agency created by two or more public entities under statutory provisions relating to municipal power agencies created as joint powers agencies or under a predecessor statute, including a re-created agency. The bill authorizes participating public entities of a municipal power agency, by concurrent ordinance, to elect to apply the bill's provisions to such an agency as an alternative to statutory provisions relating to municipal power agencies created as joint powers agencies. The bill requires a concurrent ordinance, as adopted by each public entity, to contain identical provisions and to state that the public entity has elected that such an agency shall, on and after the date designated in the ordinance, be governed by the bill's provisions relating to alternative governance. The bill's provisions relating to alternative governance prevail to the extent of a conflict between those provisions and any other law, including a law regulating the affairs of a municipal corporation or a home-rule charter provision, and are required to be liberally construed to carry out the purpose of those bill provisions.

C.S.S.B. 776 establishes that a municipal power agency to which the bill's provisions relating to alternative governance apply is a separate municipal corporation, a political subdivision of this state, and a political entity and corporate body. The bill prohibits such an agency from imposing a tax but grants such an agency all the other powers relating to municipally owned utilities and provided by law to a municipality that owns a public utility. The bill authorizes the public entities that created or re-created such an agency, by concurrent ordinances, to add a new public entity as a participating public entity in the agency or remove a public entity from participation in the agency. The bill requires such concurrent ordinances, as adopted by each public entity, to contain identical provisions, to define the boundaries of such an agency to include the territory within the boundaries of each participating public entity, to designate the name of the agency,

and to designate the number, place, terms, and manner of appointment of directors, as provided by the applicable bill provision. The bill prohibits the public entities from adding or removing a public entity if the addition or removal will impair an obligation of such an agency. The bill prohibits the public entities from adopting such concurrent ordinances adding a participating public entity unless the addition has been approved by a majority of the qualified voters of the additional public entity at an election called and held for that purpose. The bill provides for the process and procedures of such an election.

C.S.S.B. 776 requires such an agency to be governed by a board of at least four directors who are appointed by place by the governing bodies of the participating public entities and entitles each participating public entity to appoint at least one director. The bill makes the board responsible for the management, operation, and control of the property belonging to such an agency. The bill sets out additional provisions relating to the composition of the board, director terms, director qualifications, director removal, and successor directors, among other requirements and authorizations regarding the board and its operation. The bill prohibits an employee, officer, or member of the governing body of a participating public entity serving as a director from having a personal interest in a contract executed by such an agency other than as an employee, officer, or member of the governing body of the public entity and establishes that such a person is considered to be a local public official for the purposes of Local Government Code provisions relating to regulation of conflicts of interest of officers of municipalities, counties, and certain other local governments. The bill establishes that such an agency and a participating public entity are considered to be political subdivisions for the purposes of Local Government Code provisions relating to conflicts of interest as regards depository provisions affecting funds of municipalities, counties, and other local governments.

C.S.S.B. 776 authorizes the public entities that created or re-created such an agency to amend the creating concurrent ordinances to provide for the agency to be governed by one board of directors for the agency's generation system and another board of directors for the agency's transmission system. The bill requires such concurrent ordinances as amended to contain identical provisions. The bill's provisions relating to a single board of directors for such an agency apply to the separate boards with certain exceptions, and the bill specifies that the separate boards are not required to have the same number of directors.

C.S.S.B. 776 prohibits such an agency from engaging in any utility business other than the generation and sale or exchange of electric energy to a participating public entity or a private entity that owns jointly with the agency an electric generating facility in Texas or other than the provision of wholesale transmission service under the applicable statutory provisions. The bill authorizes such an agency to perform any act necessary to the full exercise of the agency's powers; enter into a contract, lease, or agreement with or accept a grant or loan from a department or agency of the United States, a department, agency, or political subdivision of Texas, or a public or private person; use the uniform system of accounts prescribed for utilities and licenses by the Federal Energy Regulatory Commission; and adopt rules to govern the operation of the agency and its employees, facilities, and service. The bill authorizes the agency to sell, lease, convey, or otherwise dispose of any right, interest, or property of the agency, including its electric facilities. The bill establishes that any such sale, lease, conveyance, or other disposition having a value of more than \$10 million requires prior approval of each participating public entity, unless the public entities have agreed otherwise by written contract or the property was purchased by the agency for mining purposes.

C.S.S.B. 776 authorizes such an agency to award a contract for construction of an improvement that involves the expenditure of more than \$20,000 only on the basis of competitive bids and the bill provides for the bidding process. The bill requires an entity that has joint ownership of the improvement to be constructed or that is an agent of a joint owner to award a contract using the entity's contracting procedures. The bill authorizes such an agency to participate through appropriate contracts in power pooling and power exchange agreements with other entities through direct or indirect system interconnections. The bill authorizes an entity that participates

with such an agency in the sale or exchange of electric energy to purchase electric energy from the agency, sell or dispose of electric energy to the agency, or exchange electric energy with the agency. The bill establishes that an entity payment for electric energy purchased from such an agency is an operating expense of the entity's electric system. The bill authorizes a contract of such an agency to sell or exchange electric energy to require the purchaser to pay for the electric energy regardless of whether the electric energy is produced or delivered.

C.S.S.B. 776 authorizes such an agency to establish and maintain rates and charges for electric power and energy the agency delivers, transmits, or exchanges and sets out requirements for such rates and charges. The bill establishes that the state reserves its power to regulate such an agency's rates and charges for electric energy supplied by the agency's facilities. The bill establishes that, until obligations issued under statutory provisions generally governing joint powers agencies have been paid and discharged, with all interest on the obligations, interest on unpaid interest installments on the obligations, and other connected and incurred costs or expenses, the state pledges to and agrees with the purchasers and successive holders of obligations that it will not limit or alter the power of such an agency to establish and collect rates and charges under this provision sufficient to pay necessary operational and maintenance expenses, interest and principal on obligations issued by the agency, sinking funds and reserve fund payments, and other charges necessary to fulfill the terms of any agreement or take any action that will impair the rights or remedies of the holders of the obligations.

C.S.S.B. 776 authorizes such an agency to issue revenue bonds to accomplish the purposes of such an agency and to issue refunding bonds, sets out authorizations and requirements relating to the issuance, form, and provisions of agency bonds, authorizes such an agency to issue nonnegotiable purchase money notes to acquire land or fuel resources and to issue bond anticipation notes, and sets out provisions relating to such notes.

C.S.S.B. 776 establishes that it is a public purpose for a public entity that has participated in the creation of such an agency to pay costs of planning, acquisition, construction, ownership, operation, and maintenance of electric facilities. The bill authorizes a public entity to issue public securities, including bonds, notes, or other forms of indebtedness, in the principal amount approved by the governing body of the public entity, for the purpose of financing electric facilities or improvements to electric facilities to be owned or operated by such an agency or otherwise in furtherance of a purpose described by this bill provision regarding public securities. The bill authorizes a public entity and such an agency to agree in a contract, or by other official action of the public entity and agency, to terms and conditions governing the use by the agency of the proceeds of the public securities issued by a public entity for a purpose described by this bill provision regarding public securities. The bill sets out provisions regarding authorized considerations and agreed terms and extensions related to such a contract or other official action. The bill authorizes such a public security to include certain debt obligations issued in accordance with specified Government Code and Local Government Code provisions or to include other types or forms of debt that the public entity is authorized to issue. The bill authorizes each participating public entity to exercise any power of an issuer under Government Code provisions relating to obligations for certain public improvements.

C.S.S.B. 776 authorizes the participating public entities of such an agency, by concurrent ordinance, to dissolve the agency and sets out requirements relating to the dissolution. The bill prohibits the participating public entities from dissolving such an agency if the dissolution will impair the rights or remedies of holders of obligations issued by the agency. The bill establishes that the dissolved agency continues to exist to satisfy existing liabilities or obligations, collect, distribute, or liquidate its assets, and take any other action required to adjust and wind up its business and affairs; requires the assets of the dissolved agency that remain after all liabilities or obligations of the agency have been satisfied to be distributed to the public entities that created the agency and requires the public entities to establish the method of distribution by agreement. The bill establishes that such an agreement between a public entity and such an agency entered into before September 1, 2015, is enforceable according to the terms of the agreement, regardless

of a provision to the contrary in the bill's provisions relating to alternative governance for certain municipal power agencies.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 776 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 37.051, Utilities Code, is amended by adding Subsections (g) and (h) to read as follows:

(g) A municipally owned utility or a municipal power agency created under Subchapter B, Chapter 163, may not directly or indirectly construct, install, or extend a transmission facility outside of the municipal boundaries of the municipality that owns the municipally owned utility, or the power agency's boundaries, which for the purposes of this subsection consist of the municipal boundaries of the participating public entities, unless the municipally owned utility or power agency first obtains from the commission, through the application process provided by Section 37.053, a certificate that states that the public convenience and necessity requires or will require the transmission facility. Section 37.056 applies to an application under this subsection. This subsection does not apply to a transmission facility placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, a municipally owned utility was contractually obligated to purchase at least 190 megawatts of capacity.

(h) The commission shall adopt rules as necessary to provide exemptions to the application of Subsection (g) that are similar to the exemptions to the application of this section to an electric utility, including exemptions for:

(1) upgrades to an existing transmission line that do not require any additional land, right-of-way, easement, or other property not owned by the municipally owned utility;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 37.051, Utilities Code, is amended by adding Subsections (g), (h), and (i) to read as follows:

(g) A municipally owned utility or a municipal power agency created under Chapter 163 may not directly or indirectly construct, install, or extend a transmission facility outside of the municipal boundaries of the municipality that owns the municipally owned utility, or the power agency's boundaries, which for the purposes of this subsection consist of the municipal boundaries of the participating public entities, unless the municipally owned utility or power agency first obtains from the commission, through the application process provided by Section 37.053, a certificate that states that the public convenience and necessity requires or will require the transmission facility. Section 37.056 applies to an application under this subsection. This subsection does not apply to a transmission facility placed in service after September 1, 2015, that is developed to interconnect a new natural gas generation facility to the ERCOT transmission grid and for which, on or before January 1, 2015, a municipally owned utility was contractually obligated to purchase at least 190 megawatts of capacity.

(h) The commission shall adopt rules as necessary to provide exemptions to the application of Subsection (g) that are similar to the exemptions to the application of this section to an electric utility, including exemptions for:

(1) upgrades to an existing transmission line that do not require any additional land, right-of-way, easement, or other property not owned by the municipally owned utility;

and
(2) the construction, installation, or extension of a transmission facility that is entirely located not more than 10 miles outside of a municipally owned utility's certificated service area that occurs before September 1, 2021.

No equivalent provision.

SECTION 2. Subchapter A, Chapter 35, Utilities Code, is amended.

SECTION 3. Chapter 163, Utilities Code, is amended.

SECTION 4. The changes in law made by this Act apply only to a transmission facility for which construction began on or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 2015.

and
(2) the construction, installation, or extension of a transmission facility that is entirely located not more than 10 miles outside of a municipally owned utility's certificated service area that occurs before September 1, 2021.

(i) The commission, not later than the 185th day after the date the application is filed, shall approve an application filed under Subsection (g) for a facility that is to be constructed under an interconnection agreement appended to an offer of settlement approved in a final order of the Federal Energy Regulatory Commission that was issued in Docket No. TX11-01-001 on or before December 31, 2014, directing physical connection between the ERCOT and SERC regions under Sections 210, 211, and 212 of the Federal Power Act (16 U.S.C. Sections 824i, 824j, and 824k). In approving the application, the commission may prescribe reasonable conditions to protect the public interest that are consistent with the final order of the Federal Energy Regulatory Commission.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.

SECTION 5. Same as engrossed version.